

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA | : | <u>ORDER</u> |
| - against - | : | 20 Civ. 7569 (DC) |
| | | 18 Civ. 2888 (DC) |
| Maxo Jean, | : | 13 Cr. 280 (DC) |
| Defendant. | : | |

CHIN, Circuit Judge:

The Second Circuit, in an order dated November 24, 2021, 2d Cir. 21-1715 Dkt. No. 28, instructed this Court to construe defendant Maxo Jean's letters and notice of appeal, 13 Cr. 280 Dkt. Nos. 106, 107, 109, as a motion pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure. Rule 4(a)(6) permits a district court to reopen the time to file an appeal if: (1) the court finds that the moving party did not receive notice of the order sought to be appealed within 21 days after entry; (2) the motion is filed within 180 days after the order is entered or within 14 days after the moving party receives notice, whichever is earlier; and (3) the court finds no party would be prejudiced. Fed. R. App. P. 4(a)(6).

Mr. Jean seeks to appeal the Court's January 8, 2021, denial of his 28 U.S.C. § 2255 motion. 2d Cir. 21-1715 Dkt. No.

2; 20 Civ. 7569 Dkt. No. 3. The Court finds that Mr. Jean did not receive notice of the order sought to be appealed within 21 days after entry. Mr. Jean contacted the Clerk's Office in or about April 2021 to inquire about his motion. 13 Cr. 280 Dkt. No. 106. The Court accepts Mr. Jean's representation that he had not received the decision. The Clerk's Office advised him that the motion had been decided and, after receiving two letters from Mr. Jean requesting the decision, sent him a copy. 13 Cr. 280 Dkt. Nos. 106, 107. The decision, however, was returned to sender (the Court) on May 5, 2021. 13 Cr. 280 Dkt. No. 108. It is unclear when Mr. Jean ultimately received notice, but it was some time after April 2021 and certainly more than 21 days after the order was entered. The Court also finds that Mr. Jean's Rule 4(a)(6) motion was filed within 180 days after the order was entered. Mr. Jean sent his first letter on April 8, 2021, less than 180 days after the order was entered on January 8, 2021. Finally, the Court finds that no party would be prejudiced.

Accordingly, Mr. Jean's Rule 4(a)(6) motion is **GRANTED**. The Second Circuit determined that Mr. Jean's notice of appeal, docketed June 28, 2021, 13 Cr. 280 Dkt. No. 109, was untimely. Now that this Court has granted Mr. Jean's Rule 4(a)(6) motion, his June 28, 2021, notice of appeal is deemed

timely filed. Mr. Jean shall notify the Second Circuit of this order within 30 days of its entry. The Clerk of the Court is directed to mail a copy of this order, and another copy of the Court's January 8, 2021, order, to defendant at the address listed below.

SO ORDERED.

Dated: New York, New York
December 7, 2021



DENNY CHIN

United States Circuit Judge
Sitting by Designation

To: Maxo Jean, 68120-054
F.C.I. Gilmer
P.O. Box 6000
Glenville, WV 26351-6000